

U.S. DISTRICT COURT

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IDAHO

HONORABLE JUDGE Gary Carter

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UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO
BOISE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FLORENTINO VILLEGAS-DELGADILLO,

Defendant.

No. 03CR-00109-001-BLW

DEFENDANT'S SENTENCING MEMO

SUMMARY

The defendant submits that the undercover officers engaged in sentencing entrapment because they should have arrested him after the first delivery or few deliveries instead of systematically engaging in dozens of small quantity deliveries. Mr. Villegas-Delgadillo urges this court to reduce the amount of controlled substances attributable to him by disregarding or eliminating the amount involved in all the sales.

DEFENDANT'S SENTENCING MEMO

- 1 -

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Additionally, or even alternatively, the defendant contends that separate conspiracies exist in this case such that he should not be held accountable for the entire amounts attributed to him for purposes of his base level offense.

Finally, the defendant objects to the imposition of the recommended four-point enhancement for leader/organizer. Essentially, this defendant served as the go between for the actual source/owner of the drugs in the transactions he was involved in. In any event, he was not the leader/organizer of the 13 plus drug distributors during the course of this investigation.

FACTUAL DISPUTES

At the outset, it is important to note that the defendant was in Mexico from December 2001 until April 2002 and then again from September 2002 until May 2003. Yet, during these dates the defendant is alleged to be responsible for deliveries conducted by other individuals who he supposedly supplied. As he was not even in this country, and no wire transfers were ever sent to him, it is somewhat clear the deliveries in these time periods should be excluded from the relevant conduct.

§ 34. The defendant does not dispute the facts contained in this paragraph to the extent that they are attributed to "co-defendants." However, the defendant disputes the following to the extent the Government seeks to attribute the facts to him.

- a. The defendant disputes that he was anyone's "boss."
- b. The defendant disputes that any "runner" acted on his behalf. He disputes that he met with any "runners."
- c. Overall, there were ongoing separate conspiracies. At times, when one group was unable to fill an order a separate and distinct group provided the controlled substances.

§ 35. The defendant acknowledges that he did drive a juvenile and they delivered drugs to the detective.

1 § 39. The defendant acknowledges that he obtained controlled substances from
2 Martin Cosme-Jara. To the extent that the Government has independent information
3 that Mr. Gonzales was in fact a drug dealer, Mr. Villegas disputes that he dealt drugs
4 with him.

5 a. To the extent this paragraph identifies runners, it is so vague and
6 ambiguous as to the nexus between the alleged runners and Mr.
7 Villegas that it certainly should not be used as the basis to establish
8 him as a leader.

9 b. The defendant disputes that he was receiving cash on a daily basis
10 as is suggested in this paragraph. The defendant did not
11 personally, nor did he direct individuals to retrieve money for him
12 on a daily basis.

13 § 41 The defendant disputes that he was involved in the delivery of .6 grams
14 of heroin on November 28, 2001.

15 § 42 The defendant disputes that he was involved in the delivery of .28 grams
16 of heroin on December 5, 2001. To the extent that this paragraph suggests that Mr.
17 Villegas was involved in an unlawful business venture with Michelle Goddard, the
18 same is disputed. To the extent that Ms. Goddard is purportedly one of the individuals
19 whom Mr. Villegas was a leader over, the same is disputed.

20 § 43 The defendant disputes that he was involved in the delivery of 1.4 grams
21 of heroin on December 13, 2001. To the extent this paragraph seeks to attribute
22 quantities to Mr. Villegas or that he was the leader/supervisor of these two individuals,
23 the same is disputed.

24 § 44 The defendant disputes that he was involved in the delivery of .3 grams
25 of heroin on December 21, 2001. To the extent this paragraph seeks to attribute
26 quantities to Mr. Villegas or that he was the leader/supervisor of these two individuals,
27 the same is disputed.
28

1 § 45 The defendant disputes that he was involved in the delivery of .6 grams
2 of heroin on December 27, 2001. To the extent this paragraph seeks to attribute
3 quantities to Mr. Villegas or that he was the leader/supervisor of these two individuals,
4 the same is disputed.

5 § 46 The defendant disputes that he was involved in the delivery of .6 grams
6 of heroin on January 23, 2002. To the extent this paragraph seeks to attribute
7 quantities to Mr. Villegas or that he was the leader/supervisor of these two individuals,
8 the same is disputed.

9 § 47 The defendant disputes that he was involved in the delivery of 1.1 grams
10 of heroin on February 4, 2002. To the extent this paragraph seeks to attribute
11 quantities to Mr. Villegas or that he was the leader/supervisor of these two individuals,
12 the same is disputed.

13 § 48 The defendant disputes that he was involved in the delivery of 1.3 grams
14 of heroin on February 12, 2002. To the extent this paragraph seeks to attribute
15 quantities to Mr. Villegas or that he was the leader/supervisor of these two individuals,
16 the same is disputed.

17 § 49 The defendant disputes that he was involved in the delivery of 1.3 grams
18 of heroin on February 14, 2002. To the extent this paragraph seeks to attribute
19 quantities to Mr. Villegas or that he was the leader/supervisor of these two individuals,
20 the same is disputed.

21 § 50 The defendant disputes that he was involved in the delivery of 1.8 grams
22 of heroin on February 26, 2002. To the extent this paragraph seeks to attribute
23 quantities to Mr. Villegas or that he was the leader/supervisor of these two individuals,
24 the same is disputed.

25 § 51 The defendant disputes that Ramon Alonso Burgara is his son. He
26 further disputes that he was involved in the delivery of 1 or more grams of heroin on
27 February 14, 2002. To the extent this paragraph seeks to attribute quantities to Mr.
28

1 Villegas or that he was the leader/supervisor of these two individuals, the same is
2 disputed.

3 § 52 This paragraph clearly identifies Ricardo Alcala as being involved with
4 Willie aka Victor Duarte. It does not establish any nexus between those men and Mr.
5 Villegas. The defendant disputes that he was involved in the delivery of 1.4 grams of
6 heroin on March 11, 2002. To the extent this paragraph seeks to attribute quantities to
7 Mr. Villegas or that he was the leader/supervisor of these two individuals, the same is
8 disputed.

9 § 53 To the extent this paragraph seeks to establish that Mr. Villegas was
10 involved with these unidentified male or that he was the leader/supervisor of these
11 two individuals, the same is disputed.

12 § 54 The defendant disputes that he was involved in the delivery of 4.8 grams
13 of heroin on April 15, 2002. To the extent this paragraph seeks to attribute quantities to
14 Mr. Villegas or that he was the leader/supervisor of these two individuals, the same is
15 disputed. This paragraph simply establishes the existence of separate conspiracies. As
16 noted therein, it establishes that Ramon Burgara-Torres was a leader of an organization
17 to which Carlos DeLeon and Saul Arce-Magana were key members.

18 § 55 The defendant acknowledges being in the Green Pontiac Grand Am. The
19 reason that Roberto Bermudez occupied the vehicle was because he used it to take a
20 driving test for his license. Mr. Villegas did not participate in, direct, or otherwise aid
21 and abet any alleged deliveries by Victor Manuel Castillo Duarte. To the extent this
22 paragraph seeks to attribute quantities to Mr. Villegas or that he was the
23 leader/supervisor of these two individuals, the same is disputed.

24 § 56 The defendant disputes that he was involved in the delivery of 2.9 grams
25 of heroin on April 29, 2002. Clearly, this amount should be attributed to Victor
26 Manuel Castillo Duarte and Roberto Bermudez. To the extent this paragraph seeks to
27 attribute quantities to Mr. Villegas or that he was the leader/supervisor of these two
28 individuals, the same is disputed.

1 § 57 The defendant disputes that he was involved in the delivery of 4.3 grams
2 of heroin on May 9, 2002. Again, he disputes that Ramon Burgara is his son. To the
3 extent this paragraph seeks to attribute quantities to Mr. Villegas or that he was the
4 leader/supervisor of these two individuals, the same is disputed. The mere fact that the
5 vehicle at issue was previously seen at the defendant's residence should be insufficient
6 to attribute this transaction to him. Moreover, this paragraph provides further
7 credence to the fact that Victor had his own ongoing business when the unidentified
8 female placed an order directly from him.

9 § 58 The defendant occasionally sent t money to relatives in Mexico. However,
10 there are no facts that establish that, assuming arguendo, that the defendant wired
11 money to Mexico on this date, that it was an illegal transaction.

12 § 59 The defendant disputes that he was involved in the delivery of 4.3 grams
13 of heroin on May 23, 2002. To the extent this paragraph seeks to attribute quantities to
14 Mr. Villegas or that he was the leader/supervisor of these two individuals, the same is
15 disputed.

16 § 60 The defendant disputes that he was involved in the delivery of 2.3 grams
17 of heroin and 2 ounces of methamphetamine on June 17, 2002. To the extent this
18 paragraph seeks to attribute quantities to Mr. Villegas or that he was the
19 leader/supervisor of these two individuals, the same is disputed.

20 § 61 The defendant disputes that he was involved in the delivery of 6.1 grams
21 of heroin and 2 ounces of methamphetamine on July 2, 2002. Once again, this
22 transaction establishes that Ramon and Victor were involved in a conspiracy. To the
23 extent this paragraph seeks to attribute quantities to Mr. Villegas or that he was the
24 leader/supervisor of these two individuals, the same is disputed.

25 § 62 The defendant disputes that he was involved in the delivery of 11.6
26 grams of heroin and 2 ounces of methamphetamine on July 18, 2002. Once again, this
27 transaction establishes that Ramon and Victor were involved in a conspiracy. To the
28 extent this paragraph seeks to attribute quantities to Mr. Villegas or that he was the

1 leader/supervisor of these two individuals, the same is disputed. Similarly, Ramon and
2 Victor proceeded to make additional sales of controlled substances following this
3 transaction without any contact whatsoever with Mr. Villegas given further credence to
4 the argument that separate conspiracies existed.

5 § 63 The defendant disputes that Victor Duarte, Ramon Burgara and
6 "numerous other drug runners" worked for Mr. Villegas. The defendant disputes that
7 he was involved in any delivery of drugs on July 24, 25, or 26, 2002. Once again, this
8 transaction establishes that Ramon and Victor were involved in a conspiracy. To the
9 extent this paragraph seeks to attribute quantities to Mr. Villegas or that he was the
10 leader/supervisor of these two individuals, the same is disputed.

- 11 a. Bobbie Brown is not the sister-in-law of Florentino Villegas – she is
12 the girl friend of his cousin.
- 13 b. The defendant further disputes that he controlled both residences;
- 14 c. It is not unusual for a vehicle to park overnight at a residence;
- 15 d. Moreover, other than mere conclusory allegations, there are no
16 facts that establish the connection between Mr. Villegas and the
17 alleged drug dealing outlined in this paragraph.

18 § 64 The defendant disputes that he was involved in any drug dealing with
19 Jesus Rodelo. Mr. Villegas rented a trailer/mobile home from Mr. Rodelo at 1193 SE
20 11th Street. Mr. Villegas disputes that Mr. Rodelo is a drug dealer but instead was Mr.
21 Villegas' landlord.

22 § 65 To the extent this paragraph seeks to attribute overt acts to Mr. Villegas
23 or that he was the leader/supervisor of these two individuals, the same is disputed.

24 § 66 The defendant disputes that he was involved in arranging for the delivery
25 on August 15, 2002. The arrangements were made exclusively between Victor Duarte
26 and the undercover officer. Once again, this transaction establishes Victor was involved
27 in a conspiracy. To the extent this paragraph seeks to attribute quantities to Mr.
28 Villegas or that he was the leader/supervisor of this individual, the same is disputed.

1 § 67 The defendant disputes that he was involved in the delivery of 3.4 grams
2 of heroin on August 15, 2002. Once again, this transaction establishes that Ramon and
3 Victor were involved in a conspiracy as they arrived together to deliver to the
4 undercover officer. To the extent this paragraph seeks to attribute quantities to Mr.
5 Villegas or that he was the leader/supervisor of these two individuals, the same is
6 disputed.

7 § 68 The defendant disputes that he was involved in the delivery of heroin set
8 up for the next day; August 27, 2002. Once again, this transaction establishes that
9 Ramon and Victor were involved in a conspiracy. Although Ramon informed the
10 undercover officer that Victor was in Mexico, Ramon arranged for the delivery of the
11 drugs on behalf of Victor. Mr. Florentino Villegas name was never even mentioned To
12 the extent this paragraph seeks to attribute quantities to Mr. Villegas or that he was the
13 leader/supervisor of these two individuals, the same is disputed.

14 § 69 The defendant disputes that he was involved in the delivery of 3.2 grams
15 of heroin on August 27, 2002. Ramon Burgara and David Aguirre delivered the drugs
16 to the undercover officer's apartment. Once again, this transaction establishes that
17 Ramon and Victor were involved in a conspiracy with others. To the extent this
18 paragraph seeks to attribute quantities to Mr. Villegas or that he was the
19 leader/supervisor of these two individuals, the same is disputed.

20 § 70 The defendant disputes that he was involved in arranging the delivery of
21 4 ounces of methamphetamine on September 9, 2002. The transaction was negotiated
22 between Ramon Burgara and the detective. The defendant submits that at times he was
23 a middleman/source of drugs but not a leader or organizer of Mr. Burgara. He
24 disputes that he was a "boss." Once again, this transaction establishes that Ramon and
25 Victor were involved in a conspiracy. To the extent this paragraph seeks to attribute
26 quantities to Mr. Villegas or that he was the leader/supervisor of these two individuals,
27 the same is disputed.
28

1 § 73 The defendant disputes that he acknowledged Ramon Burgara as his son.
2 He referred to Ramon as "el chavalo" or the boy but not as his own biological son. Mr.
3 Villegas disputes that he said he was in charge of the drug sales. Mr. Villegas submits
4 that Ramon, Victor Duarte, Ricardo Alcala and Nicolas Verdin each had their own
5 ongoing separate conspiracies. Mr. Villegas disputes that he was the leader/organizer
6 of these individuals.

7 § 75 To the extent this paragraph seeks to attribute quantities to Mr. Villegas
8 or that he was the leader/supervisor of the listed individuals, the same is disputed. This
9 paragraph simply establishes that Ramon Burgara had an associate: Michael Aguirre.

10 § 76 To the extent this paragraph seeks to attribute quantities to Mr. Villegas
11 or that he was the leader/supervisor of the listed individuals, the same is disputed. Mr.
12 Villegas had no knowledge of the kilo of cocaine or the heroin seized.

13 § 77 Mr. Villegas disputes that Roberto Bermudez was working for him. He
14 further disputes that money was dropped off to him on a daily basis. Moreover,
15 despite the extensive surveillance, the evidence does not support this allegation.
16 Similarly, it would have been impossible to accomplish given the fact that Mr. Villegas
17 spent several months in Mexico during the course of the charged conspiracy.

18 § 79 The defendant disputes that he was involved in the delivery of 4.1 grams
19 of heroin on October 28, 2002. Once again, this transaction establishes that Victor was
20 involved in a conspiracy with unknown Mexican males as they arrived together to
21 deliver to the undercover officer. To the extent this paragraph seeks to attribute
22 quantities to Mr. Villegas or that he was the leader/supervisor of these two individuals,
23 the same is disputed.

24 § 80 The defendant disputes that he was involved in the delivery of 4.5 grams
25 of heroin on October 30, 2002. There is no nexus between Mr. Villegas and Ricardo
26 Alcala as to this delivery. To the extent this paragraph seeks to attribute quantities to
27 Mr. Villegas or that he was the leader/supervisor of these two individuals, the same is
28 disputed.

1 § 81 The defendant disputes that he was involved in the delivery of 249.7
2 grams of methamphetamine on November 15, 2002. Once again, this transaction
3 establishes that Ramon and Victor were involved in a conspiracy. In this transaction,
4 Carlos Covarrubias delivered drugs to the undercover detective. Immediately
5 thereafter, the funds were delivered to Victor Duarte and not Mr. Villegas. To the
6 extent this paragraph seeks to attribute quantities to Mr. Villegas or that he was the
7 leader/supervisor of these two individuals, the same is disputed.

8 § 82 The defendant disputes that he was involved in the delivery of 33.3 grams
9 of heroin on December 9, 2002. Once again, this transaction establishes that lack of any
10 nexus to Mr. Villegas with regard to the computer or the drugs that were delivered. It
11 appears that Ricardo Alcala, Ramon and Victor were involved in the same conspiracy.
12 To the extent this paragraph seeks to attribute quantities to Mr. Villegas or that he was
13 the leader/supervisor of these two individuals, the same is disputed.

14 § 84 The defendant disputes that he was involved in the delivery of 30.9 grams
15 of heroin on December 10, 2002. Once again, this transaction establishes that Victor was
16 involved in a conspiracy, and probably the "boss." To the extent this paragraph seeks
17 to attribute quantities to Mr. Villegas or that he was the leader/supervisor of these two
18 individuals, the same is disputed.

19 § 85 As Mr. Villegas had nothing to do with the laptop computer, the cocaine
20 Ricardo Alcala agreed to provide the undercover officer should not be attributed to him
21 for purposes of relevant conduct.

22 § 86 See, objection to § 85.

23 § 87 The defendant disputes that he was involved in the delivery of 52 grams
24 of methamphetamine on January 10, 2003. Once again, this transaction establishes that
25 Victor was acting independently from Mr. Villegas. To the extent this paragraph seeks
26 to attribute quantities to Mr. Villegas or that he was the leader/supervisor of these two
27 individuals, the same is disputed.

1 § 88 The defendant disputes that he was involved in the delivery of 64.9 grams
2 of methamphetamine on January 21, 2003. Once again, this transaction establishes that
3 Mr. Villegas was not part of all the deliveries negotiated with known traffickers.
4 Nicolas Verdin apparently obtained these drugs from Michelle Goddard and not Mr.
5 Villegas. To the extent this paragraph seeks to attribute quantities to Mr. Villegas or
6 that he was the leader/supervisor of these two individuals, the same is disputed.

7 § 89 The defendant disputes that he was involved in the delivery of 57.7 grams
8 of methamphetamine on February 18, 2003. Once again, this transaction establishes
9 that Victor Duarte and other unknown members of his organization were involved in a
10 separate conspiracy. To the extent this paragraph seeks to attribute quantities to Mr.
11 Villegas or that he was the leader/supervisor of these two individuals, the same is
12 disputed.

13 § 90 The defendant disputes that he was involved in the delivery of 68.6 grams
14 of methamphetamine on February 27, 2003. Once again, this transaction establishes a
15 separate conspiracy as the drugs were provided by Nicolas Verdin at the Verdin
16 residence. Mr. Villegas had nothing to do with the one-pound of methamphetamine or
17 one ounce of heroin inside Mr. Verdin's bedroom. To the extent this paragraph seeks
18 to attribute quantities to Mr. Villegas or that he was the leader/supervisor of these two
19 individuals, the same is disputed.

20 § 91 The defendant disputes that he was involved in the delivery of 2.5 grams
21 of heroin and two ounces of methamphetamine on April 1, 2003. Once again, this
22 transaction establishes the drug dealing activity of Nicolas Verdin separate and
23 independent from Mr. Villegas. To the extent this paragraph seeks to attribute
24 quantities to Mr. Villegas or that he was the leader/supervisor of these two individuals,
25 the same is disputed.

26 § 92 The defendant disputes that he was involved in the delivery of 27.2 grams
27 of heroin on April 17, 2003. Once again, this transaction establishes that Victor Duarte
28 and other unknown members of his organization were involved in a separate

1 conspiracy. Mr. Villegas was not involved in this transaction in any manner
2 whatsoever. To the extent this paragraph seeks to attribute quantities to Mr. Villegas
3 or that he was the leader/supervisor of these two individuals, the same is disputed.

4 § 93 The defendant disputes that he was involved in the delivery of .63 grams
5 of heroin on April 22, 2003 from Michelle Goddard at her residence. The delivery took
6 place after Ms. Goddard received the heroin from Victor Duarte and Ramon Burgara.
7 Once again, this transaction establishes that Victor Duarte and other unknown
8 members of his organization were involved in a separate conspiracy. To the extent this
9 paragraph seeks to attribute quantities to Mr. Villegas or that he was the
10 leader/supervisor of these two individuals, the same is disputed.

11 § 94 The defendant disputes that he was involved in the delivery of 1.5 grams
12 of heroin on May 14, 2003 from Michelle Goddard at her residence. The delivery took
13 place after Ms. Goddard received the heroin from Victor Duarte and Ramon Burgara.
14 Once again, this transaction establishes that Victor Duarte and other unknown
15 members of his organization were involved in a separate conspiracy. To the extent this
16 paragraph seeks to attribute quantities to Mr. Villegas or that he was the
17 leader/supervisor of these two individuals, the same is disputed.

18 § 95 The defendant disputes that he was involved in the delivery of 1.48 grams
19 of heroin on May 20, 2003 from Michelle Goddard at her residence. The delivery took
20 place after Ms. Goddard received the heroin from Victor Duarte and Ramon Burgara.
21 Once again, this transaction establishes that Victor Duarte and other unknown
22 members of his organization were involved in a separate conspiracy. To the extent this
23 paragraph seeks to attribute quantities to Mr. Villegas or that he was the
24 leader/supervisor of these two individuals, the same is disputed.

25 § 96 The defendant disputes that he was involved in the delivery of 2 ounces
26 of methamphetamine on June 2, 2003 from Nicolas Verdin. To the extent this paragraph
27 seeks to attribute quantities to Mr. Villegas or that he was the leader/supervisor of
28 these two individuals, the same is disputed.

1 § 98 The defendant disputes the amounts listed in this paragraph. It was
2 actually \$600.00 per ounce for a total of \$5,400.00.

3 § 100 The defendant was only going to provide the drugs because Victor Duarte
4 was not in the area. The defendant and Victor had separate ongoing businesses. To the
5 extent this paragraph seeks to attribute quantities to Mr. Villegas or that he was the
6 leader/supervisor of these two individuals, the same is disputed.

7 § 110 The defendant disputes that Genoveva Gonzalez identified Ramon
8 Burgara as Mr. Villegas' son.

9 **GROUP ONE**

10 § 118 The defendant disputes the entirety of this paragraph except to the extent
11 that he has admitted to certain deliveries herein. He was not the source/leader of 13
12 distributors in the area. The drugs located at the Bermudez residence or the Ontario
13 residences were not his.

14 § 119 The defendant disputes that he was the source for the drugs distributed
15 between November 228, 2001 and February 26, 2002 by Mr. Alcala and Mr. Lopez. As
16 previously noted, Mr. Alcala is not his brother-in-law. They always maintained
17 separate and distinct business ventures even prior to March 2002.

18 § 120 Mr. Villegas disputes the quantities attributed to him in this paragraph.

19 § 121 See, Objection to paragraph 120.

20 § 122 See, Objection to paragraph 120.

21 § 125 See, Objection to paragraph 118. The defendant also contends that no
22 leader/organizer points should be attributed to him.

23 § 156 The defendant first arrived in the United States in 1994 for two months.
24 He was working in construction but his brother unexpectedly died in Mexico. That was
25 the result of the sudden return.

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1
2 ARGUMENT

3 THIS COURT SHOULD SENTENCE THE DEFENDANT
4 WITHOUT REGARD TO THE ENTIRE AMOUNT OF
5 DRUGS ATTRIBUTED TO HIM BECAUSE
6 SENTENCING ENTRAPMENT OCCURRED

7 The court at sentencing determines the quantity of drugs for which a defendant
8 is responsible. See United States v. Castaneda, 94 F.3d 592, 594 (9th Cir. 1996).
9 Sentencing entrapment or sentence factor manipulation occurs when a defendant,
10 although predisposed to commit a minor or lesser offense, is entrapped in committing a
11 greater offense subject to greater punishment." United States v. Staufer, 38 F.3d 1103,
12 1106 (9th Cir. 1994) (internal quotation marks and citation omitted). A defendant bears
13 the burden of proving sentencing entrapment only by a preponderance of the
14 evidence. See United States v. Parrilla, 114 F.3d 124, 127 (9th Cir. 1997). The district
15 court is obligated to make express factual findings as to whether the defendant met this
16 burden. See *id.*

17 There are two possible remedies for sentencing entrapment. "First, a sentencing
18 court may decline to apply the statutory penalty provision for the greater offense that
19 the defendant was induced to commit, and instead apply the penalty provision for the
20 lesser offense that the defendant was predisposed to commit." *Id.* Alternatively, the
21 sentencing court may grant a downward departure from the sentencing range for the
22 greater offense that the defendant was induced to commit. See *id.*

23 However, because a district court may not impose a sentence below a statutory
24 minimum term, the only available remedy for sentencing entrapment where the
25 defendant is faced with a mandatory minimum term is to apply the penalty provision
26 for the lesser offense. Cf. Castaneda, 94 F.3d at 595; Naranjo, 52 F.3d at 251 n. 14.
27 Therefore, if the government induced Villegas-Delgadillo to sell more
28 methamphetamine than he was predisposed to sell, the district court should subtract

1 the amount of drugs tainted by the entrapment, and thereby reduce /eliminate the
2 mandatory minimum sentence. 21 U.S.C. § 841(b)(1)(B)(viii). See, United States v.
3 Riewe, 165 F.3d 727 (9th Cir. 1999).

4 Since the reduction in the quantity of drugs would result in the application of a
5 different statutory penalty provision altogether, this remedy does not involve a
6 departure from the applicable statutory minimum. See Castaneda, 94 F.3d at 595.
7 Overall, the defendant respectfully submits that this court should sentence him based
8 upon the deliveries he actually plead guilty to and not the small quantities involved in
9 the dozen of deliveries made by members of separate conspiracies.

10
11 **MR. VILLEGAS SHOULD NOT BE HELD ACCOUNTABLE FOR ACTS**
12 **COMMITTED BY CO-CONSPIRATORS WHO WERE PART OF A**
13 **SEPARATE CONSPIRACY FOR PURPOSES OF SETTING THE BASE**
14 **LEVEL OFFENSE.**

15 The Presentence report found that Mr. Villegas' base offense level is 32 based
16 upon the inclusion of heroin, cocaine and methamphetamine delivered by over a dozen
17 individuals in this case. However, Mr. Villegas submits that he should not be held
18 accountable for negotiations and deliveries made in furtherance of separate
19 conspiracies. That is, Mr. Villegas was in Mexico for months and individuals delivered
20 drugs throughout this time without any direction from him whatsoever. He did not
21 have any intention to become involved in any transactions while out of the country.

22 Sentencing Guideline 1B 1.3 (a) (2) allows the Court to consider conduct that was
23 "part of the same course of conduct or common scheme or plan as the offense of
24 conviction" for the purposes of computing the base offense level. In United States v.
25 Turner, 898 F.2d 705 (9th Cir. 1990) the Court held that it is proper to aggregate all
26 drugs to determine a defendant's base offense level, rather than considering only the
27 amount involved in the count on which the defendant was convicted. See also
28 Sentencing Guideline Section 2D 1.1 Note 6. However, the Court's consideration of
relevant conduct is limited to "acts and omissions committed or aided and abetted by

1 the defendant, or for which the defendant would be otherwise accountable." See
2 Sentencing Guideline Section 1B 1.3 Application Note 2.

3 The term "for which the defendant would be otherwise accountable" is defined in
4 Guideline 1B 1.3 Application Note 1. That term includes "conduct of others in the
5 furtherance of the execution of a jointly undertaken criminal activity that was
6 reasonably foreseeable by the defendant." Application note 1 further states that "where
7 it is established that the conduct was neither within the scope of the defendant's
8 agreement, nor was reasonably foreseeable in connection with the criminal activity the
9 defendant agreed to jointly undertake, such conduct is not included in establishing the
10 defendant's offense level under this guideline." See also United States v. Williams, 897
11 F.2d 1034 (10th Cir. 1990), United States v. Foote, 898 F.2d 659 (8th Cir. 1990) (a
12 defendant is responsible for quantities of drugs that he or she knew or should have
13 known about.) In the case at bar, there is no evidence that Mr. Villegas knew or should
14 have know of the deliveries committed by the other individuals listed in the facts.

15 Mr. Villegas submits that in order to aggregate all the deliveries the Government
16 seeks to attribute to him, for purposes of establishing his offense level, the trial court
17 must find that his "conduct was within the scope of the . . . agreement" or "that the
18 conduct was reasonably foreseeable in connection with the criminal activity the
19 defendant agreed to jointly undertake." The Court should not make such a finding
20 under the facts and circumstances of this of this case.

21 This case is similar to United States v. Turner, *supra*. Turner involved the
22 application of Guideline 2D1.4 and relevant conduct in a conspiracy conviction. The
23 defendant argued that the trial court erred in attributing several drug sales to him. The
24 issue was whether those sales were in furtherance of the conspiracy. The defendant
25 argued that they were not. The trial court did not make a finding as to whether or not
26 the sales in question were made in furtherance of the conspiracy. On appeal the
27 Government argued that those sales could be considered for sentencing purpose as
28

1 "relevant conduct". United States v. Turner at 713. In response the appellate court
2 stated:

3
4 "The relevant conduct section must be read in
5 conjunction with section 2(d) 1.4. which, by its explicit terms,
6 limits the sentencing court's consideration of a defendant's
7 or co-conspirator's conduct to that conduct which was in
8 'furtherance of the conspiracy [and] **was known to the**
9 **defendant or was reasonably foreseeable.**' Guidelines
10 Manual, Section 2(d) 1.4. Thus, the District Court erred by
11 calculating Beler's base offense level on the basis of his
cocaine sales without finding that the sales were in
furtherance of the conspiracy for which Beler was convicted.
See Warters, 885 F.2d at 1272-1273. The District Court's
failure to make such a finding in light of Beler's objection
violated Fed.R. Crim. Proc. 32 (c) (3) D (ii) and is further
reason to remand." United States v. Turner, 898 at 713
(emphasis added).

12 The task of sorting out the conflicting views concerning the number of
13 conspiracies is a "frustrating and challenging one." United States v. Perez, 489 F.2d 51,
14 57 (5th Cir. 1973), cert. denied, 417 U.S. 945. However, the issue is deceptively simple.
15 "The basic test is whether there was one overall agreement to perform various
16 functions to achieve the objectives of the conspiracy." United States v. Arbelaez, 719
17 F.2d 1453, 1457 (9th Cir. 1983), cert. denied, 104 S.Ct. 3543 (1984). A review of the
18 multiple conspiracy cases in the Ninth Circuit indicates that the court has looked at
19 numerous factors in determining whether one or multiple conspiracies are proven. In
20 the case at bar, the defendant submits that there were actually two conspiracies; one
21 involving marijuana and one involving cocaine.

22 In United States v. Smith, 609 F.2d 1294 (9th Cir. 1979), this court looked to a
23 wide variety of factors -- the nature of the enterprise, the scope of its operation, the
24 frequency and regularity of transactions, inter alia -- as supporting the inference that
25 the defendant knew or should have known that he was participating in a single overall
26 scheme. The Smith case analyzed the evidence before it to determine:

27 . . . whether the government has produced enough
28 evidence for a fact finder to conclude beyond a reasonable

doubt (1) that the charged conspiracy existed, (2) that the defendant had at least a slight connection to it, and (3) that the defendant knew he was connected to the charged conspiracy. Id. at 1297.

This court then went on to focus on the defendant's "knowing connection" and identified that factors above as supporting an inference of a defendant's knowledge of his participation in the overall unlawful agreement. Here, Mr. Villegas was simply involved in delivering marijuana and should not be held accountable for the cocaine.

**THE DEFENDANT SHOULD NOT BE ASSESSED A FOUR
POINT ENHANCEMENT FOR LEADER/ORGANIZER**

This court can only be reversed if its decision is clearly erroneous. United States v. Phillips, 959 F.2d 1187, 1191 (3rd Cir. 1992). A findings is clearly erroneous if, after reviewing all of the evidence, it is left with a firm conviction that a mistake has been made. Id. at 1191 (citing Ciba-Geigy Corp. v. Bolar Pharmaceutical Co., 747 F.2d 844, 850 (3d Cir. 1984) cert. denied, 471 U.S. 1137, 105 S.Ct. 2678, 86 L.Ed.2d 696 (1985). In any event, an upward adjustment must be based on more than a hunch, no matter how sound his instincts or how sagacious his judgment. United States v. Ortiz, 966 F.2d 707, 717 (1st Cir. 1992). There are insufficient facts to warrant a 2 level enhancement in this case.

Sentencing Guideline § 3B1.1 provides a range of increases in an offense level for defendants found to have played an aggravated role in the underlying criminal activity. Section 3B1.1's core focus is relative responsibility: "[T]hose who play an aggravating role in the offense are to receive sentences that reflect their greater contributions to the illegal scheme." United States v. Brown, 944 F.2d 1377, 1381 (7th Cir. 1991).

The factors to be considered when determining whether a defendant was an organizer or leader include: the exercise of decision making authority, the nature of the offense, the defendant's participation in the offense, the recruitment of

1 accomplices, the claimed right to a larger share of the fruits of the crime, and the
2 degree of control and authority exercised over others. U.S.S.G. § 3B1.1, comment. n.4.

3 To be found responsible for organizing others, and thereby subject to a §3B1.1
4 enhancement, a defendant must have at least played a significant role in supervising
5 other participants. United States v. Greenfield, 44 F.3d 1141, 1147 (2nd Cir. 1995). No
6 such evidence exists in this case.

7 To receive a § 3B1.1 increase, a defendant must have been the organizer, leader,
8 manager, or supervisor of other participants. U.S.S.G. § 3B1.1, commentary n. 2. Thus,
9 at a minimum, a defendant must have had some real and direct influence, aimed at
10 furthering the criminal activity, upon other identified participants. Section 3B1.1
11 requires the exercise of some authority in the organization, the exercise of some
12 degree of control, influence, or leadership. United States v. Brown, 944 F.2d at 1385.
13 He did not have such control over others in the underlying venture.

14 Negotiating terms of their sale do not by themselves justify a Section 3B1.1
15 adjustment. This does not indicate that the person who does them has a greater
16 degree of responsibility for putting together a particular deal than anyone else
17 involved, including a customer. See, United States v. Brown, 944 F.2d at 1381-82, 1385-
18 86.

19 Thus, section 3B1.1 applies to situations where an individual is a leader or
20 organizer of individuals who participate together in committing one or more criminal
21 acts. "[T]he adjustments authorized for role in the offense are directed to the relative
22 culpability of participants in *group* conduct." United States v. Bierley, 922 F.2d 1061,
23 1065 (3rd Cir. 1990).

24 In United States v. Catano, 65 F.3d 219 (1st Cir. 1995) the 1st Circuit held that the
25 adoption of PSR was not adequate for leadership enhancement. The district court
26 imposed a four-level leadership enhancement, finding that defendant was "the
27
28

1 principal figure, the organizer" of a drug conspiracy. The First Circuit ruled that the
2 adoption of the PSR did not satisfy § 3553(c)'s requirement of a statement of reasons.

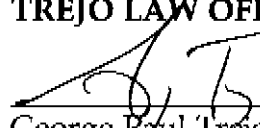
3 Overall, absent pure speculation, there are insufficient facts contained in the PSR
4 to attribute the deliveries outlined by numerous other individuals to Mr. Villegas.

5 **CONCLUSION**

6 The defendant respectfully requests that this court 1) not impose any leader or
7 organizer points; 2) depart downward or sentence him without regard to the
8 transactions he was not involved in; and 3) not impose any leader/organizer points
9 and sentence him to the low end of the applicable sentencing range.
10

11 Dated this 15th day of December 2003.

12 **TREJO LAW OFFICES**

13 
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16 Attorney for Mr. Villegas-Delgadillo
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HONORABLE JUDGE Gary Carter

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO
BOISE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FLORENTINO VILLEGAS-DELGADILLO,

Defendant.

No. 03CR-00109-001-BLW

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Defendant's Sentencing Memorandum was either hand delivered, faxed or sent via overnight delivery to the persons named below:

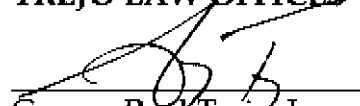
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Dated this 15th day of December 2003.

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